STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,671

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for ANFC benefits. The issue is whether the petitioner has resources in excess of the program maximum. This case has had a tortuous procedural history, which is set out in the ensuing discussion.

BACKGROUND

The facts are not in dispute. The petitioner was employed for many years in a factory. In 1991 or 1992 he injured his right leg and was forced to quit his job. The injury to his leg, though permanent, was not totally disabling, and the petitioner was able to collect unemployment benefits. He also received a cash settlement that he was able to live off for several months.

Because his injury has left him unable to drive a regularly equipped vehicle, to help himself look for work and to generally increase his mobility the petitioner used some of the settlement money to purchase a 1989 pickup truck with a modified left foot gas pedal. The truck cost around $6,000.00, which the petitioner paid in cash.

In November, 1992, when his unemployment benefits and his cash settlement had run out, the petitioner applied for ANFC. The Department denied the application when the petitioner was unable to produce evidence that his truck was worth less than its low "Blue Book" value of $3,625.00. At the hearing in this matter (held on December 18, 1992) the petitioner was advised that his application would be reconsidered if he could produce an appraisal of the truck within the ANFC resource limits or if he transferred legal ownership of the truck.

This case was initially considered by the Board at its meeting on January 13, 1993 (based on the initial Recommendation of the hearing officer dated January 4, 1993). At that time the Board passed its consideration of the matter and authorized the hearing officer to investigate whether there were any other avenues of potential relief available to the petitioner.

Upon a brief investigation, the hearing officer discovered that at least two federal district courts had declared the federal AFDC regulation limiting the equity value of a vehicle to $1,500.00 to be invalid. We Who Care, Inc. v. Sullivan, 756 F. Supp. 42 (D.C.Me. 1993) and Hazard v. Sullivan, M. D. Tenn., Docket No 3.91-0193 (preliminary injunction issued January, 1992). Another federal court, however, in a final order, had specifically upheld the regulation in question. Falin v. Sullivan, E.D. Va., Docket No. 3:91CV00196 (Feb., 1993).

In the meantime, however, unbeknownst to the hearing officer until after the Board meeting of January 13, 1993, the petitioner, immediately after the December 18, 1993, hearing, had transferred ownership of the truck to another family member in a manner that had satisfied the Department; and the Department had granted him ANFC benefits effective as of that time. Thus, the amount of benefits in dispute in this matter had become limited to a "closed period" of about two months--the time that had elapsed from the date of the petitioner's initial application to the date he transferred ownership of the truck and reapplied for ANFC.

In view of the fact that there was no longer any urgency to the case in terms of the petitioner's family being without income or the petitioner having to sell the truck, the hearing officer (in a memo dated February 5, 1993) informed the parties of the existence of the federal court cases (supra) and urged the petitioner to contact Vermont Legal Aid for representation. Unfortunately, however, the petitioner was unable to obtain legal representation.

On July 21, 1993, the hearing officer issued the revised Recommendation that in light of the petitioner's failure to "effectively challenge the validity" of the regulations in question, the Department's decision should be affirmed. At its meeting on August 25, 1993, however, it came to the Board's attention that also on July 21, 1993, the Middle District Tennessee Federal Court had issued a final decision, in Hazard v. Sullivan, (a copy of which is attached to this decision) declaring invalid the federal regulation [45 C.F.R § 233.20(a)(3)(i)(B)(2)] upon which the petitioner's disqualification from ANFC had been based.(1) The Board remanded the matter to the hearing officer to solicit further written argument from the Department and to then submit a Recommendation for decision in light of the Hazard decision.

ORDER

The Department's decision is reversed.

REASONS

The ANFC resource maximum is $1,000.00 per household. W.A.M. § 2261, 42 U.S.C. § 602(7)(B). In determining the value of a household's resources the "equity value" of up to only $1,500.00 for one vehicle used as a primary source of transportation is excluded from consideration. W.A.M. § 2263.6, 45 C.F.R. § 233(a)(3)(i)(B)(2). Assuming that the petitioner in this case had no other countable resources, a vehicle worth more than $2,500.00 placed the petitioner over the maximum under the above regulations. (Unlike the food stamp regulations, the ANFC program gives no consideration

whatsoever to handicapped-equipped vehicles. The petitioner did qualify for food stamps.)

Prior to 1981, in determining the resources of an ANFC family there was no limit to the equity value that a family could have in one vehicle. In 1981, as part of a huge "package" of federal laws designed to reduce federal spending (the Omnibus Budget and Reconciliation Act ["OBRA"], Pub. L. 97-85) several federal AFDC statutes were amended, including the provision that a family's equity interest in one vehicle would be excluded from the computation of its resources only "as does not exceed such amount as the Secretary (of Health and Human Services) may prescribe". 42 V.S.A. § 602(7)(B)(i). The Secretary of HHS then proceeded to set that amount at $1,500.00. See 45 C.F.R. § 233.20(a)(3)(i)(B)(2). This same amount was duly incorporated into the Department's Vermont ANFC regulations. See W.A.M. § 2263.6.

In setting the $1,500.00 equity limit in 1981, HHS relied on a 1979 survey of food stamp recipients to determine a "reasonable and supportable" maximum. 47 Fed. Reg. at 5657. In Hazard, supra, it was held that the agency's failure over the past twelve years to adjust the $1,500.00 vehicle equity limit to allow for inflation has rendered the regulation "a tool for denying applications, instead of the tool for protecting self-sufficiency--by allowing receipt of benefits an possession of an automobile--that it originally was intended to be". Id. at p. 6.

The Board agrees with the Hazard Court's analysis of the issue herein and it concurs with that Court's holding:

(T)here is no longer a rational connection between the facts originally supporting the automobile exclusion regulation and the regulation as it operates today. The original purpose of the regulation--to be set at such a level as to allow recipients to retain possession of a car--has become so detached from actual effect--indeed, the regulation today regularly leads to denial in and of itself because it is so low--as to make the current regulation arbitrary and capricious and not in accordance with law.

The perverse effects of the regulation are glaringly evident in the petitioner's case. The petitioner worked all his life and, until he was injured, he never sought public assistance. Before seeking that assistance he purchased a handicapped equipped truck, the primary purpose of which was to enhance his ability to return to work despite his permanent partial disability. The Department does not dispute that the petitioner probably could not have purchased a vehicle suitable to his needs for less than $2,500.00. Nonetheless, under the regulations, the petitioner was disqualified from ANFC unless and until he divested himself of ownership of his truck--thereby risking his chances of obtaining employment and getting off assistance.

In its Memorandum and in its oral argument before the Board, the Department did not take any issue with either the legal or the policy basis of the decision in Hazard. As was discussed in a previous Recommendation by the hearing officer in this matter, the Department, on its own initiative, has already obtained a waiver from the federal agency to eliminate the motor vehicle equity limitation in Vermont and it is presently awaiting legislative approval to amend its regulations to implement this waiver. Therefore, the Board can only conclude that the Department does not essentially disagree with the Hazard Court's reasoning.

In its Memorandum defending its position in this case the Department argues only that because the Hazard decision is not binding on Vermont, the Board is bound by its statute, 3 V.S.A. § 3091(d), to affirm the Department's decision in this case. This argument is curious because, to the Board's memory,

the Department has never raised it before, even though over the years the Board has considered and decided several cases (including at least two relatively recent ones that went to the Vermont Supreme Court) in which its authority to determine whether a federal regulation was in conflict with a federal statute was unquestioned. (See Sheldrick et al. v, DSW, Dkt. Nos. 90-301, 90-302, and 92-070 [May 1, 1992]; and St. Amour et al. v. DSW, 158 Vt. 77 [May, 1992].(2)) The Board doubts that the Department has now truly and reflectively committed itself to argue, in such a cursory and uninformed manner, a point it appears to have conceded for the last twenty years(3) (and which has never troubled the Vermont Supreme Court in its several reviews of Board decisions during that time, see supra, e.g.).

At any rate, 3 V.S.A. § 3091(d) provides, in pertinent part:

The board shall consider, and shall have the authority to reverse or modify, decisions of the agency based on rules which the board determines to be in conflict with state or federal law."(4)

(Emphasis added. See also, Fair Hearing No. 10.) In this case (as was also the case in Sheldrick and St. Amour, supra) the Board is considering nothing more than what it is arguably required by law in every case to determine--whether a state and/or federal "rule"(5) is consistent with "state or federal law". Simply because no court in this jurisdiction may yet have addressed whether a particular state/federal regulation is in conflict with federal law does not preclude the Board under § 3091(d) from considering this issue in the first instance. And certainly, in reaching its decision on such a question in the absence of any court ruling in this jurisdiction to the contrary, nothing in the Board's statutes or rules precludes it from relying on (or rejecting!) the reasoning of a court in another jurisdiction that has been faced with the identical issue.(6)

As discussed above, the Board concludes (and it does not appear that the Department disputes) that the Hazard decision provides a compelling legal basis to rule that the motor vehicle equity limitation contained in the federal and state regulations (45 C.F.R. § 233.20(a)(3)(i)(B)(2) and W.A.M. § 2263.6) is arbitrary and capricious and, thus, in conflict with federal law. For this reason the Department's decision in this matter is reversed.

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1. Before this decision, no court in a final and published decision had, to the Board's knowledge, declared the motor vehicle equity limitation to be invalid based a thorough analysis of the federal agency's defense of the regulation.

2. In both of these cases the Court, after lengthy and detailed analyses, reversed the board's decisions that a federal/state regulation was in conflict with a federal statute. However, the Court did not determine, and the Department did not argue, that the board did not have the authority to consider the issue in the first instance.

3. The Human Services Board was created in 1973.

4. Moreover, 3 V.S.A. § 3091(h)(1) provides, in pertinent part:

"Notwithstanding subsections (d) and (f) of this section, the secretary shall review all board decision and

orders concerning ANFC, ANFC-EA and Medicaid. The secretary shall adopt a board decision or order, except that the secretary may reverse or modify a board decision or order if:

. . .

(B) the decision or order implicates the validity or applicability of any agency policy or rule.

. . .

(Emphasis added.) This section would make little sense and would be totally unnecessary if the Board did not have the "jurisdiction" in the first place to consider the validity of a particular agency regulation.

5. For ANFC, food stamps, and medicaid, virtually all the Department's state regulations are based on federal counterparts.

6. Indeed, this is an advantage the Board did not have in considering the Sheldrick and St. Amour cases (see supra).